

FCC MAIL SECTION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 95-410

In re	)	
	)	
CONTEMPORARY MEDIA, INC.	)	MM Docket No. 95-154
	)	
Station WBOW(AM), Terre Haute, IN	)	
Station WBFX(AM), Terre Haute, IN	)	
Station WZZQ(FM), Terre Haute, IN	)	
	)	
CONTEMPORARY BROADCASTING, INC.	)	
	)	
Station KFMZ(FM), Columbia, MO	)	
Station KAAM-FM, Huntsville, MO	)	
	)	
LAKE BROADCASTING, INC.	)	
	)	
Station KBMX(FM), Eldon, MO	)	
Station KFXE(FM), Cuba, MO	)	
(New) FM Station, Bourbon, MO	)	File No. BPH-921112MH

#### ORDER TO SHOW CAUSE AND NOTICE OF APPARENT LIABILITY

Adopted: September 29, 1995

Released: October 10, 1995

By the Commission:

1. The Commission has before it for consideration: (a) the licenses of Contemporary Media, Inc. ("CMI"), for Radio Stations WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute, Indiana<sup>1</sup>; (b) the license and construction permit of Contemporary Broadcasting, Inc. ("CBI"), for Radio Stations KFMZ(FM), Columbia, Missouri, and KAAM-FM, Huntsville, Missouri<sup>2</sup>; (c) the license and construction permit of Lake Broadcasting, Inc. ("LBI"), for

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<sup>1</sup> CMI also has pending an application for a construction permit for modification of Station WBOW(AM) to increase daytime power, File No. BP-940517AD. Further action on this application will be withheld pending resolution of the instant proceeding.

<sup>2</sup> CBI also has pending an application for a "one step" modification of Station KAAM-FM to upgrade facilities, File No. BMPH-931209ID, and for an extension of time to complete construction, File No. BMPH-931210JB. Further action on these applications will be withheld pending resolution of the instant proceeding. See also discussion at paragraphs 6-8 and 16,

Radio Stations KBMX(FM), Eldon, Missouri, and KFXE(FM), Cuba, Missouri,<sup>3</sup> and LBI's pending application for a new FM station at Bourbon, Missouri, File No. BPH-921112MH (CMI, CBI, and LBI are referred to herein collectively as "Contemporary/Lake"); (d) an Informal Objection to CBI's application for extension of time to construct Station KAAM-FM (File No. 931210JB), filed by KWIX, Inc., on September 26, 1994; (e) an Opposition to Informal Objection filed by CBI on December 20, 1994; and (f) a Brief in Opposition to Commencement of Revocation or Evidentiary Hearing ("Brief"), filed by Contemporary/Lake on December 20, 1994.<sup>4</sup>

2. Information now before the Commission raises serious questions as to whether CMI, CBI, and LBI possess the qualifications to be or remain licensees of the captioned radio stations. This information could warrant revocation of the licenses and permits of the stations.<sup>5</sup> This proceeding is intended to encompass all licenses, permits, and applications held or filed by CMI, CBI, and LBI, as well as certain rule making/reallocation requests that have been filed by these parties. All such pending applications and rule making proceedings involving Contemporary/Lake will be held in abeyance pending resolution of this proceeding. Contemporary/Lake may not dispose of licenses or acquire additional licenses during the pendency of this proceeding.

3. *Background.* Michael Rice is the President, Treasurer, Director, and 100% shareholder of CMI, which is the licensee of Stations WBOW(AM), WBFX(AM), and

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*infra.*

<sup>3</sup> LBI also has pending an application for a "one step" modification of Station KBMX to upgrade facilities, File No. BMPH-930922IE, and an application for an extension of time to complete construction of Station KFXE, File No. BP-920918JM. Further action on these applications will be withheld pending resolution of the instant proceeding.

<sup>4</sup> Also under consideration are Contemporary/Lake's §1.65 Statements dated June 14, 1991, June 21, 1991, and August 19, 1994; Contemporary/Lake's Statement Pursuant to Section 1.65 and Request for 90 Days to File Brief, filed September 30, 1994; Comments of KWIX, Inc. on "Statement Pursuant to Section 1.65 and Request for 90 Days to File Brief," filed October 11, 1994; KWIX's Reply to Opposition to Informal Objection, filed December 29, 1994; Contemporary/Lake's Supplement to Brief in Opposition to Commencement of Revocation or Evidentiary Hearing, filed July 18, 1995; Comments of KWIX, Inc., on "Supplement to Brief in Opposition to Commencement of Revocation or Evidentiary Hearing," filed July 21, 1995; Contemporary/Lake's Reply to Comments of KWIX, Inc., filed August 22, 1995; and Contemporary/Lake's Supplement to Reply to Comments of KWIX, Inc., filed September 18, 1995.

<sup>5</sup> Section 312(a)(2), 47 U.S.C. § 312(a)(2), permits the Commission to revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application."

WZZQ(FM), Terre Haute, Indiana. CMI in turn is the 100% shareholder of CBI, and Michael Rice is also the President, Treasurer, and Director of CBI, which is the licensee of Station KFMZ(FM), Columbia, Missouri, and permittee of unbuilt Station KAAM-FM, Huntsville, Missouri. Michael Rice is also the President, Treasurer, and 67.5% shareholder of LBI, licensee of Station KBMX(FM), Eldon, Missouri, permittee of unbuilt Station KFXE(FM), Cuba, Missouri, and applicant for a new FM station on Channel 244A at Bourbon, Missouri.<sup>6</sup>

4. Michael Rice was arrested initially in August 1990, and convicted on August 31, 1994, in the Circuit Court of St. Charles County, Missouri, of the following charges: (i) four counts of sodomy, a Class B felony under the laws of Missouri (§ 566.060 RSMo.); (ii) six counts of deviate sexual assault in the first degree, a Class C felony (§ 566.070 RSMo.); and two counts of deviate sexual assault in the second degree, a Class D felony (§ 566.080 RSMo.). Mr. Rice was sentenced to eight years in prison for each of the four sodomy counts, seven years in prison for each of the six deviate sexual assault in the first degree counts, and five years in prison for each of the two deviate sexual assault in the second degree counts. Although the total of the sentences comes to eighty-four years, all the sentences were set to run concurrently.<sup>7</sup> According to the "Second Amended Information," which was the basis of Mr. Rice's conviction, the offenses related to sexual abuse of five children ranging in age from under fourteen to sixteen, over a period of five years from 1985 through 1990. Several of the counts alleged sexual abuse against these individuals continuing over periods of many months.

5. *Contemporary/Lake's Brief in Opposition to Hearing.* Contemporary/Lake contends that the record it has assembled and submitted with its Brief demonstrates that the public interest does not warrant a hearing concerning the impact of these convictions on Contemporary/Lake's qualifications to remain a Commission licensee. In support of this contention, Contemporary/Lake first argues, relying on *Policy Regarding Character Qualifications in Broadcast Licensing* ("1986 Character Policy Statement"), 102 FCC 2d 1179, *recon. granted in part*, 1 FCC Rcd 421 (1986), that the Commission, in evaluating character allegations, is primarily concerned with felony convictions involving false statements or dishonesty, on the theory that such convictions are relevant in predicting the propensity of an applicant to be truthful and reliable in its dealings with the Commission; because Mr. Rice's convictions were not for such crimes, Contemporary/Lake suggests that its character is not drawn into question by Rice's convictions. Additionally, citing *Williamsburg County Broadcasting Corp.*, 4 FCC Rcd 7592 (1989), Contemporary/Lake asserts that it should have

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<sup>6</sup> There is no competing applicant for this channel assignment, and the filing window has closed.

<sup>7</sup> Although Contemporary/Lake suggests that Mr. Rice may be eligible for parole after two years incarceration (he began serving his sentence in September 1994), there is no basis now in the record for any conclusion that Mr. Rice will in fact be released before the conclusion of his full eight year term of incarceration.

the opportunity to argue against the initiation of a revocation proceeding through a showing such as it has here presented, based on the mitigating factors enunciated in the *1986 Policy Statement*. Specifically, Contemporary argues that: (1) Contemporary/Lake's five broadcast stations have been operated in an exemplary manner for fifteen years; (2) Mr. Rice himself has had an exemplary broadcast record for twenty-five years, "marred only by the criminal conviction . . ."; (3) although Rice has maintained his officer and director positions in Contemporary/Lake since his arrest, Contemporary/Lake has taken "effective remedial action" by excluding Rice from customary managerial, policy, and day-to-day decisions for the past three and a half years since his arrest, and he will continue to be excluded "for the foreseeable future"; (4) Rice's misconduct was remote in time; (5) Rice's misconduct was the result of a physical debility which caused him to lack a "culpable *mens rea*"; (6) Rice has been successfully treated and is rehabilitated; and (7) the four innocent "principals" of Contemporary/Lake other than Rice would be inappropriately punished by revocation as a result of Rice's wrongdoing.

6. *KWIX, Inc.'s Informal Objection to Application for Extension to Construct KAAM-FM.* Station KAAM-FM is an unbuilt FM station for which a construction permit was granted to CBI on March 6, 1990. The original permit was for a Class A FM station on Channel 223. Three weeks after the grant of the original permit, CBI filed a petition for rule making to upgrade its authorization to a Class C2 facility at a second site. The rule making proceeding concluded with a *Report and Order*, 7 FCC Rcd 2192 (MMB 1992), allowing the upgrade to Channel 278C2. CBI filed a minor modification application to implement the upgrade on August 13, 1992, and that application, which specified a third site, was granted July 14, 1993, for a six month time period ending December 14, 1993. On August 10, 1993, less than one month after this modification application was granted, CBI filed a new petition for rule making to upgrade further to Class C1, but requiring use of a new site. On July 13, 1993, the Commission released its order adopting the "one-step" allocation and application process, which became effective on August 18, 1993. *Report and Order in MM Docket No. 92-159*, 8 FCC Rcd 4735 (1993). Following this new procedure, CBI on December 9, 1993, filed an application under the newly approved one-step process to change frequency to Channel 278C1 and increase antenna height and ERP to reflect the higher class proposed, at a new site (File No. BMPH-931209JB). The next day, on December 10, 1993, CBI filed an application on Form 307 for extension of the KAAM construction permit. In support of that extension request, CBI essentially stated that additional time was necessary for the Commission to complete the FM channel rule making and implementation application processing. As noted at footnote 2, *supra*, both the upgrade application and the extension application remain pending.

7. KWIX, Inc., is the licensee of Stations KWIX (AM)/KRES(FM), Moberly, Missouri. Moberly is located approximately eight miles from Huntsville, Missouri, which is the principal community of CBI's Station KAAM-FM. KWIX on September 26, 1994, filed an Informal Objection to the grant of the KAAM extension application. The Informal Objection raised two issues which it claimed warranted the denial of the extension application: (i) that CBI had failed to start construction and thus was not entitled to an extension under the

provisions of Section 73.3534(b) of the Commission's Rules; and (ii) that, as a result of Michael Rice's conviction, CBI lacked the character qualifications to remain a Commission licensee. KWIX also alleges that CBI's reported representations that Rice was completely excluded from the management and operation of KAAM since his arrest in 1990 were false, as evidenced by certain letters written by Rice in 1993 and 1994 relating to the station.

8. In an Opposition to Informal Objection filed on December 20, 1994, CBI responded, with respect to the stated grounds for extension of the construction permit, that its efforts to upgrade the original Class A facility to Class C2 and then Class C1 were undertaken diligently and expeditiously, and that much of the delay in building since the grant of the original permit was the result of the time it has taken the Commission to resolve and process the necessary rule making and modification proceedings. CBI states that the Commission's policy is not to require new permittees to construct lesser facilities while upgrade proposals are pending, and that the amount of time needed for the Commission's rule making and application processes to be completed are circumstances beyond CBI's control, within the meaning of Section 73.3534(b)(3) of the Rules.<sup>8</sup> With respect to KWIX's claims regarding Rice's and CBI's lack of character qualifications, CBI argues that it is fully qualified, and incorporates its December 20, 1993, Brief in Opposition to Commencement of Revocation or Evidentiary Proceeding.

9. *Discussion.* Addressing first the issue of Contemporary/Lake's basic qualifications in light of Michael Rice's conviction, we do not agree with Contemporary/Lake that the "record" it has submitted establishes that Contemporary/Lake remains qualified to be a Commission licensee without the need for an evidentiary hearing. In the *1986 Character Policy Statement*, we stated that we would consider as relevant to an applicant's or licensee's character felony convictions involving false statements, fraudulent conduct, and other misconduct before government agencies. In 1990, however, we expanded the *1986 Character Policy Statement* and indicated that evidence regarding *any* felony conviction, not just those involving fraud or untruthfulness, is relevant to our consideration of an applicant's or

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<sup>8</sup> Section 73.3534(b) of the Rules, 47 C.F.R. §73.3534(b), provides in relevant part as follows:

(b) Applications for extension of time to construct broadcast stations . . . will be granted only if one of the following three circumstances have occurred:

.....

(3) No progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary problems and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

licensee's character. See *Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990) ("*1990 Character Policy Statement*"). Our consideration includes misconduct by those whose interests are cognizable under our multiple ownership rules and where the individual has the potential to influence or control the operations of a station. *1986 Character Policy Statement, supra*, 102 FCC 2d at 1205-06. Here Rice was and continues to be the 100% owner of CMI and CBI, 67.5% owner of LBI, and President, Treasurer, and director of all three licensees, and he was apparently fully involved in the management and operations of all the stations as his full time employment. The misconduct of which he was convicted took place while he was the principal owner of these licensees. The crimes for which he was convicted, involving principally sexual abuse and sexual assault on a number of children, are extremely serious and, indeed, may come within that category of crimes which "shock the conscience."<sup>9</sup> Under the *1990 Character Policy Statement*, however, we need not determine that this is a crime which "shocks the conscience" before designating these licenses for a revocation proceeding. Rather, Rice's conviction for serious and multiple felonies clearly requires that his misconduct must be considered in evaluating Contemporary/Lake's qualifications to remain a Commission licensee.

10. While the Commission will consider several mitigating factors in evaluating the relevance of a conviction to a licensee's character qualifications,<sup>10</sup> the assertedly mitigating

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<sup>9</sup> In the *1986 Character Policy Statement*, the Commission noted that although it was generally limiting the range of felonies with which it was concerned to those involving fraud or untruthfulness, "[t]he Commission is aware that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation. . . . Such misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to an adjudication by another body." 102 FCC 2d 1179, 1205 n. 60. While the pattern of child sexual abuse and assault for which Rice was convicted may well be behavior which so shocks the conscience as to have been within the purview of the more lenient *1986 Character Policy Statement*, it is most certainly within the "any felony" misconduct that is within the purview of the *1990 Character Policy Statement*. Although Contemporary/Lake asserts that the less serious nature of his crimes is evident because Rice's sentence of 84 years was set to run concurrently (so that he would be released after eight years), this determination does not necessarily require the conclusion that his crimes are not to be considered "serious" by the Commission.

<sup>10</sup> Specifically, the *1986 Character Policy Statement* set forth the following factors to be evaluated in determining the relevancy of a conviction to an licensee's character: (1) nature and seriousness of the crime; (2) nearness or remoteness in time; (3) rehabilitation of the offender; (4) willfulness of the criminal conduct; (5) frequency of the misconduct; (6) nature of the participation, if any, of the managers and owners; (7) any remedial action taken by the licensee to curb the conduct and/or dismiss the perpetrator; and (8) the licensee's past

evidence which Contemporary/Lake raises in its Brief falls far short of demonstrating that a hearing is not necessary to find that Contemporary/Lake remains qualified to hold licenses. First, as noted above, the crimes for which Rice was convicted are extremely serious and characterized by moral turpitude. Contrary to Contemporary/Lake's assertions, we do not believe that these crimes are significantly less serious than those for which the Commission has previously initiated revocation proceedings. The fact that the Commission has not, as with drug trafficking, enunciated a particular enforcement initiative, does not mean that the crime of child sexual abuse is of less concern. Rather, the Commission's enunciated policy on drug trafficking in part reflects the fact that drug abuse has been an extremely widespread problem seriously affecting the health and safety of millions of Americans. *See Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking*, 4 FCC Rcd 7533 (1989). This special attention cannot be interpreted, however, to mean that particular acts of drug trafficking are singularly more serious or heinous than other felonies or than child sexual abuse in particular. Additionally, the Review Board's Decision in *Hara Broadcasting, Inc.*, 8 FCC Rcd 3177 (Rev. Bd. 1993), in which the Board declined to add character issues where the sole owner of an applicant was convicted of a single felony count of consensual sodomy with an adult, does not require that the Commission conclude that Rice's crimes are analogous and not serious. Rice's wrongdoing, resulting in multiple convictions on child sexual abuse and sexual assault over at least a five year period, is readily distinguishable from the single adult incident of wrongdoing involved in *Hara*.

11. Additionally, Contemporary/Lake's contention that Rice's crimes, which apparently ended in 1990 with his arrest, were "remote in time" in relation to the present, is without merit. In this regard, we note that the *1986 Character Policy Statement*, *supra*, 102 FCC 2d 1179, 1229, suggested that, unless the Commission possessed information regarding the misconduct during the prior license term (not the case here), a ten year limitation would be applied. Here, the misconduct allegedly concluded approximately five years ago, and Rice was convicted one year ago.<sup>11</sup> We believe that Rice's misconduct was not sufficiently remote in time to vitiate our concern with such serious offenses.

12. With respect to Contemporary/Lake's claim in mitigation that Rice's crimes were not willful, we note that there is no indication that Rice was found by the Court to be lacking in criminal intent, either by reason of an alleged psychiatric disorder or otherwise. Moreover, his conviction on these multiple criminal counts, all of which include an element of criminal *mens rea*, is inconsistent with this claim. Contemporary/Lake's further claim that we should not designate this case for hearing because the crimes "occurred over a relatively

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record of compliance with FCC rules and policies. 102 FCC 2d at 1197 n. 42, 1227-8. *See also 1990 Character Policy Statement*, *supra*, 5 FCC Rcd 3252.

<sup>11</sup> In addition, the *1990 Character Policy Statement*, *supra*, 5 FCC Rcd 3252, states that the Commission generally will await local court adjudication before initiating its own inquiry into the effect of such convictions on the character of the licensee or applicant in issue.

short period of time (five years) and involved a limited number of individuals (five)," is without merit. The Second Amended Information shows that the acts of sexual abuse against these juvenile victims took place over extended periods of time and constituted a recurring pattern of child sexual abuse. Rice's conviction on twelve felony counts further refutes the contention that this was an isolated instance of misconduct.

13. We also are unable to find that the licensee has taken adequate "remedial action" in mitigation of the conviction's effect on Contemporary/Lake's qualifications. Contemporary/Lake contends that by excluding Rice from management and operations since the preliminary hearing in March 1991, they have taken such remedial action. The Review Board has held, however, that a wrongdoing principal's resignation as an officer and director prior to his actual conviction does *not* moot the conviction's significance on the applicant's qualifications. *See The Petroleum V. Nasby Corp.*, 8 FCC Rcd 4035, 4036 (Rev. Bd. 1995), *appeal pending*. Moreover, here Rice *remains* as President, Treasurer, and director, with no evidence that such roles are, as Contemporary/Lake claims, in name only. Although it is claimed that Rice remains an officer and director of the three companies "in title only," there is no evidence presented that Rice is legally barred from exercising the powers which he still holds as President, Treasurer, and director of these three companies which he owns either entirely, or in the case of LBI, in the majority. The further representation that Rice will continue to be excluded from active involvement in the stations "for the foreseeable future" is similarly illusory and unreliable. Rice's alleged exclusion from control of the stations will extend, apparently, only for as long as Rice desires it to continue.

14. Moreover, there is a substantial question of fact as to whether Contemporary/Lake has misrepresented that Rice has been completely excluded from any involvement in the management or operation of the Contemporary/Lake stations since his hospitalization in April 1991 following the preliminary hearing. In its first "Statement Pursuant to Section 1.65 of the Commission's Rules" dated June 14, 1991, and repeated in each of the Section 1.65 Statements filed thereafter (*see* footnote 4, *supra*), Contemporary/Lake has made the following representations as to Rice's involvement in the management of the stations:

Since Mr. Rice's hospitalization on April 3, 1991, he has had absolutely no managerial, policy, or consultative role in the affairs of the three broadcast corporations in which he has ownership interests and officer positions . . . . In other words, pending a resolution of the referenced criminal charges, Mr. Rice is being completely insulated and excluded from any involvement in the managerial, policy, and day-to-day decisions involving any of the four licensed stations and three construction permits held by the three corporations.

15. As noted above, however, KWIX claims in its Informal Objection that Rice has continued to make management decisions, including conducting negotiations over the sale of its existing stations and acquisition of others, as evidenced by three letters written by Rice in 1993 and 1994, well after the 1991 date after which he was supposedly excluded from all



management decisions. These letters are written on "Contemporary Media Broadcast Group" stationery. In one of the letters, dated April 29, 1993, Rice suggests that it was written as a follow-up to a telephone call to Rice from its recipient (another local broadcaster) earlier in the week. After discussing a possible trade of certain stations owned by each, Rice concludes, "[i]f you have any further thoughts or ideas, please let me know." In another letter written the same day to another broadcaster, Rice suggests that he was "following up" on a telephone call the broadcaster made to Janet Cox, Contemporary/Lake's Vice President, regarding sale of the unbuilt construction permit for KAAM. Again, Rice concludes the letter by suggesting that if the broadcaster has "any further thoughts or ideas, please let me or Janet know." Additionally, certain of the letters from "character" witnesses submitted by Contemporary/Lake as Exhibit C to its Brief suggest that Rice has continued to have some involvement in the stations after April 1991. For example, the letter from Contemporary/Lake engineer Eric Hoehn, dated August 8, 1994, suggests that "during the past eight years of my full time employment" starting in 1986, he and Rice had been engaged in extensive travel together between the various Contemporary/Lake stations "making signal measurements and supervising construction projects." Another letter, from broadcast engineering consultant James F. Mitchell, suggests that after Rice got out of the hospital in October 1991, Mitchell "worked with him in various technical matters going from Eldon, Missouri to Terre Haute, Indiana," where the Contemporary/Lake stations are located. Finally, a letter written by LBI minority stockholder Kenneth W. Kuenzie, dated August 1, 1994, suggests that Rice is still involved in decision making of LBI: "even though Mike [Rice] is the major stock holder, all decisions and business dealings are done with all three stock holders considerations welcomed." These items raise a substantial and material question as to whether Contemporary/Lake has been completely truthful with the Commission on this issue. Therefore, an appropriate issue will be designated as to whether Contemporary/Lake has been truthful in its representations to the Commission.

16. In addition, if Contemporary/Lake's representations regarding Rice's exclusion from the management, policy, and day-to-day operations of the stations are true, a question is raised as to whether Contemporary/Lake has engaged in an unauthorized transfer of control of the stations. Section 310(d) of the Communications Act states, in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

Section 73.3540(a) of the Commission's Rules states that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."

17. There is no exact formula by which control of a broadcast station can be determined. In ascertaining whether a transfer of control has occurred, we have traditionally

looked beyond the legal title to whether a new entity or individual has obtained the right to determine the basic operating policies of the station. See *WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station matters, such as personnel, programming and finances, is non-delegable. *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981). Here, Rice is the 100% owner of CMI and CBI, the 67.5% owner of LBI, and the President of all three corporations. His exclusion from all management, policy, and operational functions of the stations, as claimed by Contemporary/Lake, would appear to result in an unauthorized transfer of control of the stations. Therefore an appropriate issue will be designated.

18. On the basis of the foregoing, the Commission is unable to conclude that CMI, CBI, and LBI continue to possess the basic qualifications to remain licensees. Additionally, on the basis of the foregoing, the Commission is unable to find that the public interest will be served by granting the pending applications for modification of existing licenses and permits and for a new FM station. We reject the contention, set forth in Contemporary/Lake's Brief, that we can resolve the issue of their qualifications *in their favor* without a hearing on the record, as we believe is required in these circumstances.

19. With respect to KWIX's Informal Objection to the grant of the application for extension of the KAAM-FM construction permit, we reject the contention that the extension should be denied because CBI should have built the station notwithstanding the pendency of the rule making proceeding and the one-step upgrade proposal to change from Class C2 to Class C1 status. CBI is correct in its assertion that the Commission has not required new permittees to build lower class facilities at one site when the permittee has timely and expeditiously filed a proposal to upgrade to a higher class of station. See, e.g., *Letter to Lovcom, Inc.*, Mass Media Bur., October 12, 1993. Such a requirement would be wasteful and unreasonable, and the Commission has viewed the time elapsed while awaiting Commission action on such rule making proceedings as being circumstances beyond the control of the applicant, within the meaning of Section 73.3534(b)(3) of the Rules. Thus we deny this aspect of KWIX's Informal Objection to the grant of the extension application. With respect to the matters raised by KWIX as to CBI's character qualifications, these issues will be resolved through the revocation proceeding here initiated. As noted above at footnote 2, *supra*, further action on the KAAM extension and upgrade applications will be withheld pending resolution of the instant proceeding.

20. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(2) of the Communications Act of 1934, as amended, Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., ARE DIRECTED TO SHOW CAUSE why the licenses and/or construction permits for Radio Stations WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute, Indiana, KFMZ(FM), Columbia, Missouri, KAAM-FM, Huntsville, Missouri, KBMX(FM), Eldon, Missouri, and KFXE(FM), Cuba, Missouri, should not be REVOKED, and LBI's pending application for a new FM station at Bourbon, Missouri,

should not be denied, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine the effect of Michael Rice's convictions on the basic qualifications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
2. To determine whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., misrepresented to the Commission that, subsequent to his arrest, Michael Rice has been excluded from the management and operation of the Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., radio stations.
3. To determine, pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Michael Rice has engaged in the unauthorized transfer of control of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
4. To determine, in light of the evidence adduced under the foregoing issues, whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and/or Lake Broadcasting, Inc., possess the requisite qualifications to be or remain licensees of their respective radio stations.

21. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, is directed to serve upon Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to all the foregoing issues.

22. IT IS FURTHER ORDERED, That pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to all the foregoing issues.

23. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the licensees, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that they will appear at the hearing and present evidence on the matters specified in the Order. If the licensees fail to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* Section 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* Section 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the

case to the Commission in the regular course of business and an appropriate order will be entered. See Section 1.92(c) of the Commission's Rules.

24. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an Order revoking the licenses of CMI, CBI, and/or LBI for their respective stations identified in the caption above, it shall also be determined if CMI, CBI, and/or LBI has willfully or repeatedly misrepresented facts to the Commission in violation of Section 1.65 of the Commission's Rules, or if CMI, CBI, and/or LBI engaged in an unauthorized transfer of control in violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules. If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in an amount up to \$250,000 for the willful and/or repeated violation of Section 1.65 of the Commission's Rules, 47 C.F.R. §1.65, and/or for the willful and/or repeated violation of Section 310(d) of the Communications Act of 1934, as amended, and/or Section 73.3540 of the Commission's Rules, 47 C.F.R. §73.3540.

25. IT IS FURTHER ORDERED, That this document constitutes a Notice of Apparent Liability for forfeiture for violation of Section 1.65 of the Commission's Rules, 47 C.F.R. §1.65, Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C §310(d), and/or Section 73.3540 of the Commission's Rules, 47 C.F.R. §73.3540. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.


26. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Order by *Certified Mail - Return Receipt Requested*, to:

Contemporary Media, Inc.  
235 Jungerman Road  
Suite 212  
St. Peters, MO 63376

Contemporary Broadcasting, Inc.  
235 Jungerman Road  
Suite 212  
St. Peters, MO 63376

Lake Broadcasting, Inc.  
235 Jungerman Road  
Suite 212  
St. Peters, MO 63376

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary